

The Honorable Judge Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JAMES MCDONALD,

Plaintiff,

v.

ONEWEST BANK, FSB, NORTHWEST
TRUSTEE SERVICES, INC., MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., INDYMAC BANK FSB, DOES 1-50,

Defendants.

No. 2:10-CV-1952-RSL

**DEFENDANTS ONEWEST, MERS,
AND NORTHWEST TRUSTEE
SERVICES, INC.'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendants OneWest Bank, FSB ("OneWest"), Mortgage Electronic Registration Systems Inc. ("MERS"), and Northwest Trustee Services, Inc. ("NWTs") (collectively "Defendants") submit this Answer in response to Plaintiff James McDonald's ("Plaintiff") Complaint as follows. All allegations not expressly admitted, denied, or otherwise pled below are hereby to be construed as denied.

I. JURISDICTION, VENUE AND PARTIES

1.1 Defendants admit the allegations of Paragraph 1.1.

1.2 Defendants assert the Note speaks for itself, and the Deed of Trust speaks for itself.

To the extent that the Note and Deed of Trust do not speak for themselves, Defendants lack

1 sufficient information to admit or deny the remaining allegations of Paragraph 1.2 and on that
2 basis deny them.

3 1.3 Defendant OneWest admits that it does business in King County, Washington
4 with headquarters located in Pasadena, CA. Defendant OneWest denies the remaining allegations
5 contained in Paragraph 1.3. Defendants MERS and NWTs lack sufficient information to admit
6 or deny the allegations of Paragraph 1.3 and on that basis deny them.

7 1.4 Defendant NWTs admits that it is a Washington based corporation and recorded a
8 Notice of Trustee's Sale for the above referenced Property. NWTs asserts the Notice of Trustee's
9 Sale speaks for itself. NWTs lacks sufficient information to admit or deny the remaining
10 allegations of Paragraph 1.3 and on that basis denies them.

11 1.5 Defendant MERS admits that it is a corporation in Delaware and is listed as the
12 beneficiary of the Deed of Trust named by the original lender Indymac Bank, FSB but lacks
13 sufficient information to admit or deny the remaining allegations of Paragraph 1.5 and on that
14 basis denies them.

15 1.6 Defendants lack sufficient information or belief to either admit or deny the
16 allegations of Paragraph 1.6 and therefore deny them.

17 1.7 The statement in Paragraph 1.7 of the Complaint is a statement that does not
18 warrant a denial or admission from Defendants.

19 **II. BACKGROUND FACTS AND HISTORY**

20 2.1 Defendants assert that the Note speaks for itself, and the Deed of Trust speaks for
21 itself. To the extent they do not, Defendants lack sufficient information to admit or deny the
22 remaining allegations of Paragraph 2.1 and on this basis deny them.

1 2.2 Defendants assert that the Assignment of Deed of Trust speaks for itself. To the
2 extent that it does not, Defendants lack sufficient information to admit or deny the remaining
3 allegations of Paragraph 2.2 and on that basis deny them. Defendants deny that Mr. Burnett is not
4 a “true employee” of MERS. Defendants lack sufficient information to admit or deny the
5 remaining allegations of Paragraph 2.2 and on that basis deny them.
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7 2.3 Defendants assert that the Appointment of Successor Trustee speaks for itself. To
8 the extent that it does not, Defendants lack sufficient information to admit or deny the remaining
9 allegations of Paragraph 2.3 and on that basis deny them.
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11 2.5 Defendants lack sufficient information to admit or deny the allegations of
12 Paragraph 2.5 and on that basis deny them.

13 2.6 Defendant OneWest admits Plaintiff sought a loan modification from OneWest
14 but was denied. Defendant OneWest lacks sufficient information to admit or deny the remaining
15 allegations set forth in Paragraph 2.6, and on that basis denies them. Defendants MERS and
16 NWTS lack sufficient information to admit or deny the allegations set forth in Paragraph 2.6, and
17 on that basis deny them. To the extent Paragraph 2.6 contains a legal conclusion, Defendants are
18 not required to respond.
19

20 2.7 To the extent that Paragraph 2.7 contains legal conclusions, Defendants are not
21 required to respond. Defendants deny the remaining allegations of Paragraph 2.7.

22 2.8 Paragraph 2.8 contains a number of statements and legal conclusions that do not
23 warrant a denial or admission from Defendants. Further, Defendants lack sufficient information
24 to admit or deny the remaining allegations of Paragraph 2.8 and on that basis deny them.
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III. PLAINTIFF'S CLAIMS

1. Claim of Violation of Deed of Trust Act RCW 61.24 et. Seq.

a Defendants re-state responses to each and every item and allegation above.

b Defendant NWTs denies the allegations of Paragraph b. Defendants OneWest and MERS lack sufficient information to admit or deny the allegations of Paragraph b and on this basis deny them.

c Defendant NWTs denies the allegations of Paragraph c. Defendants OneWest and MERS lack sufficient information to admit or deny the allegations of Paragraph c and on this basis deny them.

d Defendant OneWest denies the allegations of Paragraph d. Defendants MERS and NWTs lack sufficient information to admit or deny the allegations of Paragraph d and on this basis deny them.

2. Claim of Slander of Title

a Defendants re-state responses to each and every item and allegation above.

b Defendant NWTs denies the allegations of Paragraph b. Defendants OneWest and MERS lack sufficient information to admit or deny the allegations of Paragraph b and on this basis deny them.

c Defendant OneWest denies the allegations of Paragraph d. Defendants MERS and NWTs lack sufficient information to admit or deny the allegations of Paragraph d and on this basis deny them.

3. Claim of Wrongful/Unlawful Foreclosure

a Defendants re-state responses to each and every item and allegation above.

b Defendants deny the allegations of Paragraph b.

4. Claim for Temporary Restraining Order and Permanent Injunction

a Defendants re-state responses to each and every item and allegation above.

b Defendants lack sufficient information to admit or deny the allegations of Paragraph b and on this basis deny them.

c The statement in Paragraph c of the Complaint is a statement that does not warrant a denial or admission from Defendants.

d The statement in Paragraph d of the Complaint is a statement that does not warrant a denial or admission from Defendants.

5. Claim for Lack of Standing

a Defendants re-state responses to each and every item and allegation above.

b Defendants deny the allegations of Paragraph b.

c Defendants deny the allegations of Paragraph c.

d Defendants deny the allegations of Paragraph d.

**AS FOR ITS SEPARATE AND AFFIRMATIVE DEFENSES, DEFENDANTS
ALLEGE AS FOLLOWS:**

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)**

Defendants allege that Plaintiff has failed to state facts sufficient to constitute any cause of action against the Defendants.

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SECOND AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Defendants allege that the Plaintiff's claims are barred in whole or in part because of the Plaintiff's failure to take reasonable steps to mitigate his damages, if any.

THIRD AFFIRMATIVE DEFENSE
(Equitable Defense, Laches)

Defendants allege that the Plaintiff's claims are barred by the equitable doctrine of laches, unclean hands and failure to do equity.

FOURTH AFFIRMATIVE DEFENSE
(Defendants Acted in Good Faith)

Defendants are excused from any and all liability under the facts alleged in Plaintiff's claims for relief because at all material times Defendants acted in good faith and conducted all material transactions in good faith.

FIFTH AFFIRMATIVE DEFENSE
(Plaintiff Not Entitled to Relief)

Defendants deny Plaintiff is entitled to any relief for which he prays.

SIXTH AFFIRMATIVE DEFENSE
(Plaintiff's Own Negligence)

Plaintiff is barred from recovery, or said recovery, if any, must be proportionately reduced, as any injury or damage alleged suffered by Plaintiff occurred as a proximate result of the negligence on his own part, in that Plaintiff failed to exercise ordinary care on his own behalf at the time and place alleged.

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TENTH AFFIRMATIVE DEFENSE
(Suffered No Damages)

Defendants allege Plaintiff's claims are barred because Plaintiff suffered no damages as a result of the allegations in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE
(Waiver)

Defendants allege that each of Plaintiff's claims against the Defendants is barred by the doctrine of waiver.

TWELFTH AFFIRMATIVE DEFENSE
(No Cost or Attorney's Fees)

Defendants allege that Plaintiff is not entitled to recovery of attorney's fees by law as Plaintiff has not alleged any statute or contract which entitles Plaintiff to attorney's fees in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE
(Frivolous Action)

Defendants are informed and believe, and based thereon, allege the Complaint against the Defendants was not brought in good faith and is frivolous, and by reason thereof, Defendants are entitled to, *inter alia*, reasonable expenses, including attorney's fees incurred in defending this action, pursuant to *Washington Revised Code Section 4.84.185*.

RESERVATION

Defendants hereby reserve the right to amend this Answer by way of adding affirmative defenses, counter claims, cross claims, or third party claims as the existence of such claims is discovered in the future.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That the Plaintiff recovers nothing on account of the claims made in the Complaint.
3. That the Defendant be awarded costs of suit herein; and
4. For such other and further relief as the Court deems equitable and just.

DATED: this 4th day of February, 2011.

ROUTH CRABTREE OLSEN, P.S.

By: 

Heidi Buck, WSBA #41769
Attorney for Defendants, OneWest,
MERS, and Northwest Trustee Services
Inc.